

Public School Academies and Part-Time Nonpublic Pupils

May a public school academy provide [nonessential elective] instruction to nonpublic school pupils at the nonpublic school site?

Section 166b of the State School Aid Act (attached) describes the requirements and criteria for a public school district to educate part-time nonpublic pupils.

Subsection (1) describes the right of a parent or legal guardian of a minor in grades 1 through 12 in a nonpublic school or a minor who is being home-schooled to enroll in a curricular offering provided by a district or intermediate school district (ISD). The instruction will take place at the public school site. The curricular offering must also be available to the full-time pupils in the district or ISD in that grade level or age group during regular school hours.

Comment: State School Aid Act Section 3(6) defines "district" and includes "a public school academy" except in specific sections. Section 166b is not identified as an exception. Therefore, the language in 166b(1) that refers to "district" also applies to public school academies and allows public school academies to enroll part-time nonpublic or home-schooled pupils in curricular offerings at the public school (PSA) site.

Subsection (2) addresses the provision of curricular offerings by the district to part-time nonpublic or home-schooled pupils at the nonpublic school site. The requirements of the district to provide this service include, but are not limited to, the following:

- The nonpublic school is located, or the nonpublic students are educated, within the geographic boundaries of the district or of a contiguous district with which the district has an agreement to provide the services.
- The curricular offering also is available to full-time pupils in the pupil's grade level or age group in the district during the regular school day at a public school site.

Comment: Attorney General Opinion # 7154 (attached) states that public school academies have no defined geographical territory assigned to them; they have no geographic boundaries. Therefore, 166b(2) does not apply to PSAs.

[NOTE: In addition, a pupil is not a resident of a public school academy. Every pupil or potential pupil in the state is a resident of a public school district; however, because a public school academy does not have geographic boundaries, PSAs do not have resident pupils.]

Revised School Code Section 504(1) states the following:

A public school academy may be located in all or part of an existing public school building. A public school academy shall not operate at a site other than the single site requested for the configuration of grades that will use the site, as specified in the application required under section 502 and in the contract.

Attorney General Opinion #7126 (attached) responded to the question, "May a public school academy operate at more than one site?" The opinion rendered is that, under the Revised School Code, a public school academy may operate at more than one

site provided that it operates only a single site for each configuration of grades and only at the site or sites specified in the school's charter application and in the contract issued by its authorizing body.

Comment: In order for a district to provide curricular offerings for nonpublic or home-schooled pupils at the nonpublic school site, as specified in school code section 166b(2), the curricular offerings also must be available to full-time pupils in the same grade level or age group in the district during the regular school day. For example, an art class provide to the nonpublic pupils in the third grade at the nonpublic school site also must be provided to the public school's third grade pupils at the public school during the regular school day.

For a public school academy, to provide an art class to the nonpublic pupils in the third grade at the nonpublic school site, the public school academy also must make the third grade art class available to the third graders attending the public school academy. In that case, however, the public school academy would be providing instruction to third graders at two different sites, violating the single site requirement.

The question may be raised, "What does it mean to 'operate at' a site...?" An integral part of school operations is the provision of instructional services to pupils. By providing instruction at the nonpublic school site, the public school academy would be "operating at" the nonpublic school site in violation of the single site requirement.

Conclusion: Therefore, given the above, a public school academy shall not provide instruction to nonpublic school pupils at the nonpublic school site.

Additional comments:

State School Aid Act Section 166b(2) also includes as a criterion for a public school district to provide instruction to nonpublic school pupils at the nonpublic site that the instruction must be provided directly by an employee of the district. In recent situations that have come to the attention of the Department, instruction that was being provided by a public school academy at nonpublic school sites has been delivered by employees of a third party contractor. This would be an additional area of noncompliance with state law.

EMM – 10/10/07

THE STATE SCHOOL AID ACT OF 1979 (EXCERPT)
Act 94 of 1979

388.1766b Minor enrolled in nonpublic school or home school.

Sec. 166b.

(1) This act does not prohibit a parent or legal guardian of a minor who is enrolled in any of grades 1 to 12 in a nonpublic school or who is being home-schooled from also enrolling the minor in a district or intermediate district in any curricular offering that is provided by the district or intermediate district at a public school site and is available to pupils in the minor's grade level or age group, subject to compliance with the same requirements that apply to a full-time pupil's participation in the offering. However, state school aid shall be provided under this act for a minor enrolled as described in this subsection only for curricular offerings that are offered to full-time pupils in the minor's grade level or age group during regularly scheduled school hours.

(2) This act does not prohibit a parent or legal guardian of a minor who is enrolled in any of grades 1 to 12 in a nonpublic school located within the district or who resides within the district and is being home-schooled from also enrolling the minor in the district in a curricular offering being provided by the district at the nonpublic school site. However, state school aid shall be provided under this act for a minor enrolled as described in this subsection only if all of the following apply:

(a) The nonpublic school site is located, or the nonpublic students are educated, within the geographic boundaries of either the district or a contiguous district operating under a cooperative program of which the district is a member and that is established for the purpose of providing nonessential elective courses to nonpublic school students.

(b) The nonpublic school is registered with the department as a nonpublic school and meets all state reporting requirements for nonpublic schools.

(c) The instruction is scheduled to occur during the regular school day.

(d) The instruction is provided directly by an employee of the district or of an intermediate district.

(e) The curricular offering is also available to full-time pupils in the minor's grade level or age group in the district during the regular school day at a public school site.

(f) The curricular offering is restricted to nonessential elective courses for pupils in grades 1 to 12.

(3) A minor enrolled as described in this section is a part-time pupil for purposes of state school aid under this act.

History: Add. 1993, Act 175, Eff. Oct. 1, 1993 ;-- Am. 1995, Act 130, Eff. Oct. 1, 1995 ;-- Am. 1996, Act 300, Eff. Oct. 1, 1996 ;-- Am. 1998, Act 339, Imd. Eff. Oct. 13, 1998 ;-- Am. 1999, Act 119, Imd. Eff. July 20, 1999

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STATE OF MICHIGAN

MIKE COX, ATTORNEY GENERAL

EDUCATION:	Enrollment in public school districts upon leaving
PUBLIC SCHOOL ACADEMIES:	public school academies after pupil membership count day

SCHOOLS AND SCHOOL DISTRICTS:

A public school academy is not a "school district" for purposes of section 1147 of the Revised School Code, MCL 380.1147. Rather, section 1147 applies to general powers school districts and first class school districts, which, in accordance with the clear language of that section, must enroll students who reside in the district.

A public school district is obligated under section 1147 of the Revised School Code to enroll a student who elects to leave a public school academy and who resides in the district regardless of when in the school year the student chooses to enroll.

If, after the pupil membership count day, a general powers school district enrolls former public school academy students, the district is entitled to receive a portion of the per pupil funds attributable to those students if the enrollment satisfies the statutory requirements described in section 25b of the State School Aid Act of 1979, MCL 388.1625b.

A public school district must enroll a child who is qualified by age and residence and the district may not treat such a student who has exercised an educational option, such as attending a public school academy, as if that student were a nonresident of the district.

Opinion No. 7154

March 31, 2004

Honorable Wayne Kuipers
State Senator
The Capitol
Lansing, MI 48909

Honorable Barbara Vander Veen
State Representative
The Capitol
Lansing, MI 48909

Honorable Bill Huizenga
State Representative

The Capitol
Lansing, MI 48909

You have asked several questions regarding the situation that arises when students leave public school academies and enroll in public school districts after the pupil membership count day.

You first ask whether a public school academy is a "school district" for purposes of the State School Aid Act of 1979 and the Revised School Code, particularly section 1147 of the Revised School Code, MCL 380.1147. The Revised School Code (Code), MCL 380.1 *et seq*, provides that a public school academy is a public school for purposes of Const 1963, art 8, § 2, and a public school district for purposes of Const 1963, art 9, § 11. MCL 380.501(1). Const 1963, art 8, § 2, provides that the Legislature shall maintain and support a system of free public elementary and secondary schools. Const 1963, art 9, § 11, establishes a state school aid fund, which provides funds to support K-12 education in Michigan.

Public school academies are included in the definition sections of both the Code and the State School Aid Act of 1979 (State School Aid Act). The definition of "public school" in the Code includes public school academy corporations, MCL 380.5(5), and the definition of "district" in the State School Aid Act includes public school academies, with certain enumerated statutory exceptions. MCL 388.1603(6). The Michigan Supreme Court has confirmed that public school academies are public schools, subject to the general supervision of the State Board of Education. *Council of Organizations and Others for Education About Parochiaid v Governor*, 455 Mich 557, 583-584; 566 NW2d 208 (1997). The Court held that public school academies meet the qualifications established by the Legislature for state funding and do not offend any constitutional provision. Accordingly, public school academies qualify as public schools under the Code and the State School Aid Act. *Id.*, at 573-574. This does not mean, however, that a public school academy is a "school district" for all purposes of the Code, particularly for purposes of section 1147.

Section 1147 creates a statutory right for all school age children to attend public school in the school district in which the child resides:

A person, resident of a school district not maintaining a kindergarten and at least 5 years of age on the first day of enrollment of the school year, shall have a right to attend school in the district. [MCL 380.1147(1).]

Under section 1147, any child who is a resident of a school district has the right to attend school in the district and is entitled to enroll in the district. *Snyder v Charlotte Public School Dist*, 421 Mich 517, 533; 365 NW2d 151 (1984). ("By couching § 1147 in terms of a child's 'right' and 'entitlement' to attend school, the Legislature wished to prevent public school districts from arbitrarily refusing admission to children who live in the district and meet the age requirements." *Id.*, at 528, n 3.)

The primary rule of statutory construction is to effectuate the intent of the Legislature. *Sun Valley Foods v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999). If the language of the statute is unambiguous, the Legislature is presumed to have intended the clear meaning it expressed. *Pohutski v Allen Park*, 465 Mich 675, 683; 641 NW2d 219 (2002). Additionally, when interpreting statutory language, all words and phrases are to be construed and understood in accordance with the common usage of the language. *Massey v Mandell*, 462 Mich 375, 380; 614 NW2d 70 (2000). Finally, every word should be given meaning and, if possible, no word should be treated as surplusage or rendered nugatory. *Pittsfield Charter Twp v Washtenaw County*, 468 Mich 702, 714; 664 NW2d 193 (2003).

General powers school districts, MCL 380.11a(1), and first class school districts, MCL 380.401, occupy territory within defined geographical boundaries and have residents who live within those boundaries. See MCL 380.626. Public school academies, in contrast, have no defined geographical territory assigned to them.¹ Accordingly, section 1147, which gives a school-aged person who is a "resident of a school district" the right to attend school in that district, has no application to public school academies.

It is my opinion, therefore, in answer to your first question, that a public school academy is not a "school district" for purposes of section 1147 of the Revised School Code. Rather, section 1147 applies to general powers school districts and first class school districts, which, in accordance with the clear language of that section, must enroll students who reside in the district.

You next ask whether a public school district is obligated to enroll a student who elects to leave a public school academy after the fall count date, even though the school district does not receive the per pupil foundation allowance for that student, which remains with the public school academy.

State school aid payments are made on the basis of the number of pupils in membership in the district or public school academy as defined in section 6(4) of the State School Aid Act, MCL 388.1606(4). The number of pupils in membership in the district is determined by a weighted formula that considers the number of full-time equated pupils enrolled and in regular daily attendance in the district or public school academy on two count days. The count days are defined in the Act as the "pupil membership count day," which is the fourth Wednesday in September, except for a district maintaining school for an entire school year, MCL 388.1606(7), and the "supplemental count day," which is the second Wednesday in February. MCL 388.1606a. Districts and public school academies receive funds based on a per membership pupil foundation allowance calculated as provided in section 20 of the State School Aid Act, MCL 388.1620.

Section 1147 provides that any school-aged child who is a resident of a school district has the right to attend school in the district. MCL 380.1147. Nothing in the Code provides that by choosing to enroll in and attend a public school academy, a student relinquishes the right to leave the public school academy and enroll in and attend school in his or her district of residence. Rather, under section 1147, the statutory right to attend school in the student's district of residence exists regardless of whether the student was previously enrolled in a public school academy and regardless of when in the school year the student chooses to enroll. To read section 1147 as containing those limitations would impermissibly impose restrictions not mandated by the Code. *Feaster v Portage Public Schools*, 451 Mich 351, 357; 547 NW2d 328 (1996).

It is my opinion, therefore, in answer to your second question, that a public school district is obligated under section 1147 of the Revised School Code to enroll a student who elects to leave a public school academy and who resides in the district regardless of when in the school year the student chooses to enroll.

Your next question assumes that the public school district must enroll the former public school academy student after the fall count date to be in compliance with section 1147 and asks whether the district is entitled to receive the per membership pupil foundation allowance, or a prorated share of the foundation allowance, based on the length of time the student will be enrolled in the public school district.

In section 25b of the State School Aid Act, MCL 388.1625b, the Legislature has provided a mechanism by which a general powers school district,² called the educating district, may recover a portion of the foundation allowance when pupils who reside in the district were counted in membership on the pupil membership count day by a public school academy or other district and enroll in the educating district after that date.

Section 25b permits an educating district to recover funds only if the following conditions apply: (1) the pupil transfers from one of three other districts (which include public school academies³), specified by the educating district and enrolls after the pupil membership count day; (2) the pupil was counted in membership in the district or public school academy from which the pupil transferred; (3) the pupil was a resident of the educating district on the pupil membership count day or met other eligibility criteria to be counted in membership in the educating district on the count day; and (4) the total number of pupils described above who transferred from one of the three other districts or public school academies and enrolled in the educating district is at least equal to the greater of 25 or 1% of the educating district's membership. MCL 388.1625b(1).

If these conditions are met, the educating district reports this to the Department of Education and the district or public school academy that counted the pupil in membership. The public school academy or district then must pay the educating district an amount equal to the per pupil foundation allowance or payment calculated under section 20 of the State School Aid Act, prorated according to the number of days that the pupil attends school in the educating district as compared with the number of days that the pupil was enrolled in the district or public school academy that counted the pupil in membership. If the district or public school academy that counted the pupil in membership does not make the payment within 30 days of receiving the report, the Department of Education must calculate the amount owed and deduct that amount from the district or public school academy's state school aid payments for the balance of the fiscal year and pay this amount to the educating district. MCL 388.1625b(2).

It is my opinion, therefore, in answer to your third question, that if, after the pupil membership count day, a general powers school district enrolls former public school academy students, the district is entitled to receive a portion of the per pupil funds attributable to those students if the enrollment satisfies the statutory requirements described in section 25b of the State School Aid Act, MCL 388.1625b.

Your final question also assumes that the public school district of residence must enroll the former public school academy student after the fall count day and asks whether the district may treat the former public school academy student as it would any other student seeking enrollment from another school district; that is, you ask whether the public school district of residence may require the family or student to follow the district's procedures, such as "schools of choice" procedures, for enrolling a student from another school district during the school year.

To answer this question, it is helpful to review the background and history of Michigan's statutes that have created increased educational options for students. As described above, section 1147 of the Code continues Michigan's long-standing policy that children have the right to attend school in the school district in which they reside. If a child wants to attend school in a district other than his or her district of residence, the Code provides that each school district has the discretionary authority to admit nonresident students; however, if the school district does so, it must charge tuition for that nonresident student. MCL 380.1401. See *Jones v Grand Ledge Public Schools*, 349 Mich 1, 10; 84 NW2d 327 (1957), interpreting section 340.582, the predecessor provision in the School Code of 1955; OAG, 1985-1986, No 6316, pp 151, 152 (September 25, 1985). Additionally, in order to count and receive state school aid funds for the nonresident student, the State School Aid Act provides that the nonresident, educating school district must have the approval of the student's district of residence. MCL 388.1606(4)(b).

In recent years, the Legislature has enacted statutory exceptions to these long-standing policies and has created educational options that allow students to attend schools other than their district of residence public schools without paying tuition or obtaining approvals from their resident district. For example, public school academies were created as an alternative to traditional public schools. MCL 380.501 *et seq.* A student may choose to attend a public school academy without paying tuition and a public school academy may count a student in membership and receive state school aid for the student without the approval of the student's district of residence. MCL 388.1606(6)(c).

In 1996, the Legislature created another option commonly referred to as "schools of choice." Established under section 105 of the State School Aid Act, MCL 388.1705, "schools of choice" is a procedure by which school districts may choose to open their enrollment to nonresident students and receive state aid funds for those students without the approval of the student's district of residence. The "schools of choice" option under section 105 is limited to situations in which both the enrolling "choice" district and the resident district are located in the same intermediate school district.

In 1999, through 1999 PA 119, the Legislature added section 105c to the State School Aid Act to extend "schools of choice" to situations in which the enrolling district and the resident district are contiguous but are located in different intermediate school districts. MCL 388.1705c. Section 105c establishes a procedure by which school districts may choose to open their enrollment to nonresident students who live in a

contiguous school district located in another intermediate school district and receive state school aid funds for those students, without the approval of the student's district of residence.

By enacting the statutes described above, the Legislature has created options that allow students to attend schools other than the schools in their district of residence, including public school academies, without paying tuition or obtaining approval from their resident district. The Legislature has never provided that students who choose to exercise these options relinquish the statutory right established in section 1147 to attend school in their district of residence. Rather, the clear language in section 1147 provides students the right and entitlement to attend schools in their district of residence and creates a mandatory duty on school districts to enroll students who are qualified by age and residence upon enrollment by a parent or legal guardian. *Snyder, supra*, 421 Mich at 528. See also, OAG, 1987-1988, No 6467, p 196 (September 16, 1987).

It is my opinion, therefore, in answer to your fourth question, that a public school district must enroll a child who is qualified by age and residence and the district may not treat such a student who has exercised an educational option, such as attending a public school academy, as if that student were a nonresident of the district.

MIKE COX
Attorney General

¹While an academy may hold real property for educational purposes, MCL 380.504a, a public school academy may not levy *ad valorem* property taxes or any other tax for any purpose. MCL 380.503(8).

²Section 25b expressly excludes first class school districts. MCL 388.1625b(1).

³See MCL 388.1603(6).

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STATE OF MICHIGAN

MIKE COX, ATTORNEY GENERAL

PUBLIC SCHOOL ACADEMIES: Charter school's authority to operate at multiple sites

SCHOOLS AND SCHOOL DISTRICTS:

Under the Revised School Code, a public school academy may operate at more than one site provided that it operates only a single site for each configuration of grades and only at the site or sites specified in the school's charter application and in the contract issued by its authorizing body.

Opinion No. 7126

March 6, 2003

Honorable Lisa Wojno
State Representative
The Capitol
Lansing, MI

You ask whether under the Revised School Code a public school academy (popularly called a charter school) may operate at more than one site.

Information supplied with your request indicates that a public school academy operates in one school building (grades K-5) at one street address in city A and operates in another school building (grades 6-10) at a different street address in the same city. Both building sites are specified in the school's charter application and in its authorizing contract.

In Part 6A of the Revised School Code, 1976 PA 451, MCL 380.1 *et seq*, the Legislature provided for the organization and operation of public school academies. MCL 380.501-380.507. A public school academy is defined as a "public school" and a "governmental agency." MCL 380.501. See *Council of Organizations and Others for Education about Parochialism v Governor*, 455 Mich 557, 567; 566 NW2d 208 (1997). In order to organize and operate a public school academy, a person or entity must apply to an authorizing body for a contract. MCL 380.502(3). As part of its application, a proposed public school academy must include a description of, and address for, the proposed physical plant in which the academy will be located. MCL 380.502(3)(j).

If an authorizing body issues a contract for a public school academy, the contract must include certain information including a description of, and address for, the academy's proposed physical plant. MCL 380.503(5)(g). Section 504(1), MCL 380.504(1), addresses the siting of the public school academy:

A public school academy may be located in all or part of an existing public school building. A public school academy shall not operate at a site other than the *single site requested for the configuration of grades that will use the site*, as specified in the application required under section 502 and in the contract. [Emphasis added.]

The purpose of statutory interpretation is to ascertain and effectuate legislative intent. If the language employed in a statute is plain and unambiguous, the statute must be applied as written and no additional interpretation is necessary. *Owendale-Gagetown School Dist v State Bd of Education*, 413 Mich 1, 8; 317 NW2d 529 (1982). In construing a statute, it is presumed that every word has some meaning and every effort must be made to avoid a construction that would render any part surplusage or nugatory. *Bommarito v Detroit Golf Club*, 210 Mich App 287, 292-293; 532 NW2d 923 (1995).

Section 504(1) of the Revised School Code provides that a public school academy "shall not operate at a site other than the single site requested for the configuration of grades that will use the site." The word "configuration" is defined as an arrangement of parts. *Webster's New World Dictionary, Third College Edition* (1988). To conclude that a public school academy may operate at only a single site would render the phrase "for the configuration of grades that will use the site" surplusage and thus violate the rule of statutory interpretation cited above.

To give meaning to every word in section 504(1) of the Revised School Code, it must be concluded that the Legislature has limited the number of sites at which a public school academy may conduct its operations to a single site for each configuration of grades. A public school academy may not, for example, operate three separate elementary schools under a single contract, all covering the same grades, at three separate locations. The statute does, however, permit a public school academy to operate at more than one site provided that it uses only a single site for each configuration of grades. Thus, a public school academy, like the one described in your inquiry, may operate one site for grades 1 through 5 and a second site for grades 6 through 10, subject, of course, to the further requirements that these sites have been specified in the school's charter application and in the contract issued by its authorizing body as required by sections 502(3)(j) and 503(5)(g) of the Revised School Code.

It is my opinion, therefore, that under the Revised School Code, a public school academy may operate at more than one site provided that it operates only a single site for each configuration of grades and only at the site or sites specified in the school's charter application and in the contract issued by its authorizing body.

MIKE COX
Attorney General

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State of Michigan, Department of Attorney General

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